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SUBJECT: EU AGREES ON ACCESS TO POLICE DATABASES FOR
BETTER CRIME CONTROL

REF: 2006 Brussels 04068

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SUMMARY

1. EU ministers for Justice and Home Affairs (JHA Council) on February 15 agreed to incorporate into the EU legal order the main provisions of the Treaty of Pr|m relating to police and judicial cooperation in criminal matters (issues coming under the so-called "third pillar") with the exception of the cross-border police intervention in case of an imminent danger. The Council agreed on legislation that will commit member states to accept the transfer of sentenced persons to the prisoner's home country in order to improve the chances of reintegration into society. Ministers also resumed discussion of a draft Framework Decision on combating racism and xenophobia. They approved the Regulation establishing the EU Agency for Fundamental Rights thus allowing the Agency to start up work in Vienna on March 1, 2007. Full text of Council conclusions has been transmitted to EUR/ERA.
END SUMMARY.

INTEGRATION OF PRUM TREATY INTO THE EU LEGAL ORDER

2. The Council agreed to incorporate the main provisions of the Treaty of Pr|m (dealing with data sharing and police cooperation, especially in the fight against terrorism, cross-border crime and illegal migration) into the EU legal order. The resulting draft decision will be forwarded to the European Parliament for its comments and the process is expected to be completed by the end of the German Presidency in June 2007. The Treaty of Pr|m, which was signed by seven EU countries (Austria, Belgium, France, Germany, Luxembourg, the Netherlands and Spain) in May 2005, provides for cross-border cooperation of police and judicial authorities. Participating states grant each other automatic access to specific national databases, amounting to a quantum leap in the cross-border sharing of information, according to a statement by the German Presidency. Because it was intended to further develop European cooperation, the Treaty of Pr|m was designed from the start to be incorporated into the EU legal framework. Nine more EU member states (Finland, Italy, Portugal, Slovakia, Slovenia,

Sweden, Bulgaria, Romania and Greece) have since declared their intention to join it. At the January 14-16 informal JHA ministerial in Dresden, the German Presidency had rallied strong support for transposing the treaty into the EU legal framework.

13. Speaking at a joint press conference, German Interior minister/Council chair Schduble and Commission Vice-President Frattini said the conversion into the EU legal order would affect all aspects related to the EU's "third pillar" except for Article 18 of the Treaty of Pr|m relating to cross-border police intervention in case of an imminent danger that will be further examined at a later stage. (Frattini hinted he might come back with proposals to the effect). Minister Schduble said the UK and Ireland invoked "specific problems" with Article 18 but reported a "clear willingness" on the part of all delegations to implement the Treaty of Pr|m "as a whole." Schduble further stated, "Transposing the treaty into EU legislation will enable all 27 EU Member States to benefit from the enormous added value provided by the treaty. Our aim is to create a modern police information network for more effective crime control throughout Europe. The special value of the treaty lies in the substantially improved and efficiently organized procedures for information-sharing. The initial implementation phase has yielded promising results, demonstrating that the Pr|m Treaty contributes significantly to strengthening internal security in Europe."

TRANSFERRING SENTENCED PERSONS TO THE HOME COUNTRY

14. The Council reached the necessary consensus on a draft Framework Decision designed to allow the transfer of sentenced EU citizens to another country

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for the purpose of enforcement of the sentence imposed. German Justice Minister/Council chair Zypries said the legislation was meant to increase the proportion of sentences served in the prisoner's home country, where he or she would have the best chances of reintegration into society. The new rules will only apply to prisoners convicted after member states will have implemented the Framework Directive (for which they will have a two years' delay). At the JHA Council in December 2006 (REFTEL), Poland refused to take extra prisoners and shocked its (then) 24 partners and the Commission by vetoing the draft. Following long discussions with the Poles, the Germans rallied the necessary consensus, based on the recognition that Poland needs more time than the other member states to cope with the practical and material consequences of the transfer of its citizens convicted in other member states. A temporary derogation of a limited scope for a maximum period of five years was granted to Poland by its initially reluctant partners. Commission Vice-President Frattini explained that Poland would "at any time be able to notify its partners that it no longer avails itself of this derogation." The Poles also agreed that Polish citizens could only be transferred with their consent.

COMBATING RACISM AND XENOPHOBIA

15. Over lunch, Ministers resumed discussion of a draft Framework Decision on combating racism and xenophobia, which the Council failed to approve in spite of protracted negotiations in the years 2003-

¶2005. The draft had then been resisted by Italy and the Nordics, who saw the proposed common rules as infringing on freedom of speech and fundamental liberties. Following the change of government in Italy, a key obstacle appears to have been lifted and the German Presidency is willing to win support for a proposal perceived as a moral imperative. Speaking to the press, Minister Zypries declined to go into specifics but declared herself confident that all delegations were now prepared to consider the adoption of legislation that would "give a clear message that the EU will not tolerate racism and xenophobia."

¶6. German officials in Brussels are privately complaining about the presentation of this proposal in the media, saying the press was wrong to present the plan as banning the wearing of Nazi uniforms or symbols (e.g. the swastika). Such a ban, they say, would not be based on the EU legislation but it would be up to the individual member states to make it a punishable offence. EU sources said the Presidency was actually trying to rally delegations around a text establishing that the following intentional conduct will be punishable in all EU countries:

-- Publicly inciting to violence or hatred, even by dissemination or distribution of tracts, pictures or other material, directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin.

-- Publicly condoning, denying or grossly trivializing:

- Crimes of genocide, crimes against humanity and war crimes as defined in the Statute of the International Criminal Court (Articles 6, 7 and 8) directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin, and

- Crimes defined by the Tribunal of N|remberg (Article 6 of the Charter of the International Military Tribunal, London Agreement of 1945) directed against a group of persons or a member of such a group defined by reference to race, color, religion, descent or national or ethnic origin.

¶7. Under the draft Framework Decision (FD), member
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states would be required to ensure that such activities are punishable by a maximum of at least 1 to 3 years of imprisonment. The FD would not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the TEU. Member states would not have to modify their constitutional rules and principles relating to the freedom of association, freedom of the press and freedom of expression (which would reassure the Nordics).

OTHER ISSUES

¶8. Ministers also:

-- Formally approved the Regulation establishing the EU Agency for Fundamental Rights (following the political agreement concluded under the

Finnish Presidency in December 2006; see
REFTEL), thus allowing the Agency to start up
work in Vienna on March 1, 2007;

-- Authorized the Director of EUROPOL to conclude
a draft agreement with Australia and to enter
into negotiations on an agreement with
Montenegro.

COMMENT

19. The Pr|m Convention is of particular interest to
U.S. officials interested in gaining access to
database information on fingerprints, DNA, and
vehicle registration in EU member states to prevent
and combat terrorism and other serious transnational
crimes. As reported by Embassy Berlin, U.S. and
German officials have initiated discussions of a
possible bilateral Pr|m-like Convention that would
incorporate selected concepts and procedures from
the Treaty but not all the EU data privacy
provisions. Successful negotiation of such an
agreement would likely have applications for the
entire European Union. END COMMENT.

GRAY